

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 155 OF 2007

Prabhakar Jajaba Bichukule ..Applicant
V/s
State of Maharashtra ..Respondent

Mr. R.S. Thakur, Advocate for the applicant

Mr. R.Y. Mirza, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 12TH FEBRUARY, 2007.

P.C.

. Heard Mr. Thakur, learned Counsel for the applicant and Mr. Mirza, learned APP for the State. Perused police papers.

2. The applicant seeks to be released on bail in Crime No. 70/2006 registered at Bhuinj Police Station for the offence punishable under Section 302 Indian Penal Code.

3. The prosecution case, in brief, is that deceased Bhauso Baban Malvade had illicit relations with Sangita Bajirao Dhurgude. She was aunt of the present applicant. On 17/5/2006 at about 9 P.M. Sangita and

deceased Bhauso Malvade were sitting under a tamarind tree at village Bieradachiwadi. At that time, the applicant came there with an axe and gave axe blow on the head of the deceased. Due to the assault, deceased was seriously injured. Later on, he was taken to the General Hospital Satara by his brother and two others. On examination at the hospital, deceased was declared dead before admission. According to the prosecution, on the way to the hospital deceased had also made oral dying declaration before three persons accompanying him that he has been assaulted by the present applicant. According to the prosecution, thus besides Sangita as eye witness, there are three witnesses before whom oral dying declaration was made. On the basis of information given by the accused the axe, as well as blood stained clothes were recovered. The muddemal property was sent to C.A. After investigation charge-sheet is filed.

4. The learned Counsel for the applicant contended that deceased was through out unconscious on the way to the hospital and was not in a position to make any dying declaration. In support of this, the applicant has filed affidavits of two of the witnesses namely Dnyandev Dharmaji Bhise and Tatyaba Sahebrao Shelke. He has also

filed affidavit of Sangita denying any illicit relations with the deceased and also denying that she was present when the deceased was assaulted. According to her, police never recorded her statement. Learned Counsel contends that in view of this material, there is no case against the present applicant except that an axe and some clothes were seized. C.A. report is also not yet received to provide any incriminating evidence against the present applicant.

5. The learned APP has pointed out that attempts are made on behalf of the applicant to win over the prosecution witnesses and the affidavits are the result of the same.

6. It may be noted that application filed by the present applicant before the Sessions Court was rejected by 5th Ad-hoc Additional Sessions Judge, Satara by order dated 6th November, 2006, wherein he referred to material against the present accused/applicant, though name of the accused is wrongly shown in the said order. The learned trial Court, while rejecting the bail application, also observed that taking into consideration the fact that the present applicant is

also resident of the same village, possibility of tampering prosecution evidence cannot be ruled out. It is material to note that exactly two months after that order, the affidavits were sworn in by three of the main witnesses against the prosecution. This actually supports the apprehension in the mind of the learned Additional Sessions Judge that if bail is granted witnesses may be tampered with. It appears that as the accused was not yet granted bail, on his behalf attempt was made to win over the prosecution witnesses. Taking into consideration the material collected by the police, it will not be desirable to take into consideration the affidavits of the prosecution witnesss field in the present application. The present applicant is in custody for last about 9 months. It will be in the interest of justice to expedite the trial and to dispose of the same within a specific period instead of granting bail to the applicant.

7. For the aforesaid reasons, application stands rejected. The learned Sessions Judge, Satara shall see that the trial against the accused/applicant is expedited and is concluded, as early as possible and in any case, before the end of April, 2007. The

prosecution shall also secure the C.A. report and produce the same before the Sessions Court at the earliest.

7. The observations made in this order are only for the purpose of deciding this application and shall not be taken into consideration, while deciding the matter after trial.

8. The Registry to communicate this order to the concerned Sessions Court.

(J.H. BHATIA, J.)